



Injured or Medically Incapacitated?

Here is What You Need to Know About Your Benefits

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The California Public Employees' Retirement System
The California Department of Fair Employment and Housing
The State Personnel Board
State Compensation Insurance Fund

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This pamphlet is intended to provide state employees and members of the California Public Employees' Retirement System with general information regarding the various state systems which may affect them if they become injured or medically incapacitated. However, this pamphlet is not intended to provide legal advice. Questions regarding the laws referenced in this pamphlet should be addressed to a personal or organizational attorney.¹

There are a number of different administrative agencies that have jurisdiction over employee medical issues, including the Workers' Compensation Appeals Board, the Department of Fair Employment and Housing, the State Personnel Board and the California Public Employees' Retirement System.

Each of these agencies serves different functions, and they utilize different standards for determining eligibility for benefits or relief. Sometimes, the resulting determinations may appear to be conflicting. Please read the entire pamphlet for an overview of the different agencies' standards and their different benefits or relief.

The following are brief descriptions of the administrative agencies listed above and some frequently asked questions regarding each. While this pamphlet discusses many of the rights and remedies provided by these agencies, it is not an exhaustive discussion. Contact the individual agencies for further information.

Footnotes

¹ In order to receive the benefits and/or relief described in this pamphlet, specific time limits may apply. Contact the applicable administrative agency for details on filing and appeal deadlines.



CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS)

Under the California Public Employees' Retirement Law (Government Code section 20000 et seq.), members of CalPERS who are substantially incapacitated from performing their usual duties may be entitled to disability retirement if they meet other eligibility requirements.

The following are some of the frequently asked questions regarding the CalPERS disability retirement process.

Q: Who determines whether the injury or medical condition renders the state employee/member "substantially unable to perform the usual or customary duties"?

A: *CalPERS makes this determination. The decision is based upon competent medical opinion.*

Q: What does CalPERS rely on to make this determination?

A: *CalPERS will review all of the available medical evidence and vocational information. If there are conflicting medical reports or if clarification cannot be secured from the treating physician, CalPERS will require an applicant to submit to an independent medical examination (IME). The IME is performed by a qualified physician(s) who meets the eligibility requirements.*

Q: Is CalPERS required to rely on workers' compensation finding?

A: *No. CalPERS may consider or rely on some or all of the medical reports issued during the course of a workers' compensation case but is not bound by the workers' compensation findings. (Please see the Workers' Compensation section, on page 10, for its standards and benefits.)*

Q: What is industrial disability retirement (IDR)?

A: *IDR is available to some members when the disability arose out of and in the course of the member's employment.*

Q: Who is entitled to IDR?

A: *IDR is available to state safety, state peace officer/firefighter, state patrol, and certain state miscellaneous members who sustain serious work-related injuries that cause substantial incapacity from the continued performance of their job duties. It is also available to state industrial members who are violently attacked by an inmate or parolee of the Department of Corrections, the Youth Authority, or of a forensic facility of the Department of Mental Health which results in substantial incapacity to perform their job duties.*

Q: Are state safety members eligible to receive 50% of their salary as an IDR allowance?

A: *Yes. Currently, state safety members qualified for IDR with retirement effective dates on or after 7/1/01 are eligible to receive 50% of their salary as an IDR allowance.*

Q: Are safety and industrial members eligible for disability retirement if they have a non-industrial injury or condition?

A: *Yes. Safety, industrial and miscellaneous members may be eligible for a non-industrial disability retirement. Generally, the disability retirement allowance is lower than the IDR allowance.*

Q: What can I do if I disagree with CalPERS' determination?

A: *If an appeal is filed within the applicable time limits, you are entitled to a hearing before an administrative law judge of the Office of Administrative Hearings. The judge's proposed decision is submitted to the CalPERS Board of Administration.*

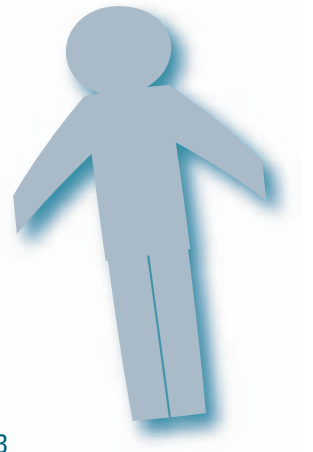
Q: Can my employer file for disability retirement on my behalf?

A: *Yes. An employer may not separate an employee otherwise eligible to retire for disability but shall apply for disability retirement for any employee believed to be disabled, unless the employee waives the right to retire for disability and elects to withdraw contributions or permits contributions to remain in the fund with rights to service retirement when eligible.*

Q: Am I entitled to a reasonable accommodation before a disability retirement application is filed on my behalf at CalPERS?

A: *The Public Employees' Retirement Law does not provide for "reasonable accommodation." However, the employer may be obligated to reasonably accommodate the employee under the other systems described in this pamphlet. (Please see the California Department of Fair Employment and Housing section, on page 4 and the State Personnel Board section, on page 6.)*

For additional information, you may check the CalPERS Web site at **www.calpers.ca.gov** or call the CalPERS Customer Contact Center at 1-800-352-2238.





CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH)

The California Department of Fair Employment and Housing (DFEH) enforces the California Fair Employment and Housing Act (FEHA, Government Code section 12900 et seq.). Among its many protections, the FEHA makes it unlawful for employers to discriminate against disabled employees and applicants. Failure to reasonably accommodate may be a form of discrimination. The FEHA also makes it unlawful for employers to discriminate against non-disabled employees or applicants because the employer regards the person as having a disability.

The following are some of the frequently asked questions regarding the disability provisions of the FEHA and the DFEH complaint process.

Q: What is a disability?

A: *Under the California FEHA, a disability is a mental or physical condition that limits an individual's ability to perform major life activities. "Major life activities" include such activities as caring for oneself, walking, hearing, breathing, learning and working. "Disability" may also include being treated by an employer as if the employee or applicant has or had a disability, even if the individual currently has no disability.*

Q: If I can no longer perform my job because of a disability, may my employer lawfully terminate me?

A: *It depends. Under the FEHA, an employer may terminate an employee if the individual is unable to perform the essential job functions and no reasonable accommodation exists that would enable the employee to perform the job, or permit the employee to transfer to a vacant position.*

Q: What are "essential" job functions?

A: *"Essential" job functions are the fundamental job duties of the position that the individual holds or desires. They do not include the marginal job duties.*

For guidance on what constitutes essential job functions, the DFEH and courts may consider written job descriptions, the amount of time spent performing the function, the consequences of not requiring the employee to perform the function, the employer's judgment as to which functions are essential, and the terms of the applicable collective bargaining agreement.

The DFEH and courts may also consider whether the position exists to perform the particular function, whether there are a limited number of employees to whom the job function may be distributed, and whether the function is so specialized that the individual is hired for his or her expertise in performing the function.

Q: What is a "reasonable accommodation"?

A: *A "reasonable accommodation" is an action taken by an employer to enable the employee to perform the essential job duties. It may include modifying the individual's job or work schedule or providing assistive devices or other kinds of support. Reasonable accommodation may also include reassignment to a vacant position when it is not possible to provide an accommodation in the current position.*

Q: Do I have an obligation to cooperate with my employer to identify a reasonable accommodation?

A: *Yes. The law requires an “interactive process” by which the employee and employer work together to find a way to accommodate the employee. Employees are expected to be active participants in this process.*

Q: Are there any circumstances that permit an employer to lawfully refuse to make an accommodation for a disabled employee?

A: *Yes, under the following circumstances: 1) no accommodation exists that would enable the employee to do the job; 2) the accommodation would cause the employer “undue hardship;” 3) even with an accommodation, the employee cannot perform the essential functions of the position in question in a manner which would not endanger the employee’s health or safety because the job imposes an imminent and substantial degree of risk to the employee; or 4) even with an accommodation, the employee cannot perform the essential functions of the position in a manner which would not endanger the health or safety of others to a greater extent than if an individual without a disability performed the job. An undue hardship means that the accommodation would require significant difficulty or expense when considered in light of the size and financial resources of the employer, the nature and cost of the accommodation, and numerous other factors.*

Q: What is the role of the DFEH?

A: *DFEH serves as a fact-finder to investigate complaints of discrimination and facilitate voluntary resolution of complaints. If the DFEH finds evidence of discrimination and settlement efforts fail, DFEH may litigate the case on behalf of the individual through an administrative hearing or a civil lawsuit.*

Q: If the DFEH finds discrimination but is unsuccessful at resolving the claim, what remedies can be obtained if DFEH litigates the case on the individual’s behalf?

A: *After an administrative hearing, the Fair Employment and Housing Commission (FEHC) may award emotional distress damages set by statute, administrative fines, back pay and out-of-pocket losses. The FEHC may also order hiring, reinstatement, promotion, reasonable accommodation, and changes in the employer’s policies and practices. After a court trial, a judge or jury may order the same remedies discussed above, except that the emotional distress damages are unlimited.*

Q: How can I file a disability discrimination complaint with the DFEH?

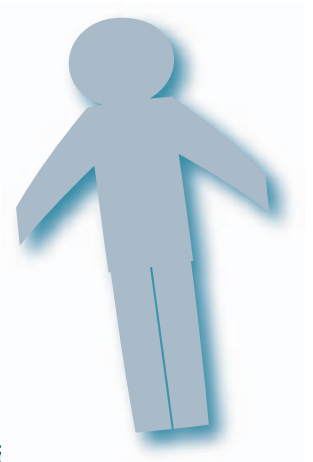
A: *You may contact the DFEH to schedule an intake interview by calling any of the following numbers:*

- Toll free: 1-800-884-1684
- Sacramento and out-of-state: 916-227-0551
- TTY Number: 1-800-700-2320

Q: What are my options if the DFEH will not prosecute my case?

A: *You may obtain a right-to-sue letter by contacting the DFEH at any of the telephone numbers listed above.*

For additional information, you may check the DFEH Web site at **www.dfeh.ca.gov** or call the DFEH at any of the numbers listed above.





STATE PERSONNEL BOARD (SPB)

The State Personnel Board (SPB) reviews appeals filed by state employees who assert that they have been improperly denied reasonable accommodations by their employers, discriminated against based upon their disabilities or perceived disabilities, and/or constructively medically terminated. SPB also hears state employee appeals from medical terminations, demotions and transfers.

The following are some of the frequently asked questions regarding these issues.

Q: Can I file an appeal with SPB if I believe my employer improperly denied my request for reasonable accommodation?

A: *Yes. If you have requested a reasonable accommodation from your employer, and your employer has denied your request, you may file an appeal with SPB. You may also file an appeal with SPB claiming that your employer has discriminated against you based upon the denial of your request for reasonable accommodation.*

Q: How does SPB determine whether my employer should have granted my request for reasonable accommodation?

A: *SPB will determine if the employee is a qualified individual with a disability who can perform the essential functions of the job with or without a reasonable accommodation. SPB will apply the law set forth in the FEHA. However, when the federal Americans with Disabilities Act (ADA) provides greater protection, SPB will apply the ADA.*

Q: What will SPB do if it determines that my employer improperly denied my request for reasonable accommodation?

A: *If SPB determines that an employer improperly denied a qualified employee's request for reasonable accommodation, SPB may order any appropriate remedy, including ordering the employer to provide the employee with the reasonable accommodation that was requested or to engage in the interactive process to determine the most appropriate accommodation. Reasonable accommodations may include providing assistive devices, job restructuring, part-time or modified schedules, or reassignment to a vacant position.*

Q: Can my employer send me for a fitness for duty examination?

A: *Yes. Under Government Code section 19253.5, a state agency may send its employee to a physician for a fitness for duty examination.*

Q: Can my employer demote me to a lower position if I can no longer perform the duties of my current position because of my medical condition?

A: *An employer may medically transfer or demote an employee to another position, including one that is less than full-time. This medical transfer or demotion may occur if a fitness for duty examination or a medical report from an employee's physician concludes that the employee is no longer fit to perform the duties of his or her current position for medical reasons, but can perform the duties of another position. The employee may file an appeal with SPB to challenge the medical transfer or demotion.*

Q: If I am medically demoted, do I keep my same pay and benefits?

A: *No. An employee who is demoted or transferred will receive the pay and benefits of the new position. But the employee will receive the maximum of the salary range of the class to which he or she is demoted or transferred, provided that the salary is not greater than the salary the employee was receiving at the time of demotion or transfer.*

Q: Can my employer medically terminate me if I can no longer perform the duties of my job?

A: *An employer may medically terminate an employee if the employee is not fit to perform the duties of any position within the agency and is not eligible for disability retirement with CalPERS. If an employee is eligible for, and does not waive, disability retirement, the employer cannot medically terminate the employee, but, instead, must apply to CalPERS for disability retirement on the employee's behalf.*

Q: Can I appeal my medical termination to SPB?

A: *Yes. If, after hearing, SPB determines that the employer has not shown that it properly medically terminated the employee, SPB may revoke the medical action and reinstate the employee to his or her prior position and may award lost backpay and benefits.*

Q: My employer has filed with CalPERS for disability retirement on my behalf. Can I appeal that to SPB?

A: *The employer's decision to file a disability retirement application on an employee's behalf is not appealable to SPB. However, if the employer has not given the employee at least 15 days' written notice of its intention to file a disability retirement application and a reasonable opportunity to respond, the employee may appeal this failure to comply with the statutory notice requirement to SPB. If the employee believes that he or she should not be disability retired, the employee may contest the disability decision before CalPERS. (Please see the CalPERS section, on page 4.)*

Q: When my employer filed for disability retirement on my behalf, it placed me on involuntary leave. Will my employer have to pay me my salary while I'm on involuntary leave pending CalPERS' decision on the retirement application?

A: *An employer that files a disability retirement application on behalf of an employee may put that employee on involuntary leave pending CalPERS' decision on the application. If the employee exhausts all his or her leave credits and other programs while on involuntary leave, or if such benefits do not equal what the employee would receive if CalPERS were to approve the disability retirement application, then the employer must pay the employee an interim disability allowance up to the amount of the estimated disability retirement benefits the employee would receive if CalPERS were to grant the disability retirement application. The employer must also continue to make all employer contributions to the employee's health plans during the period of involuntary leave.*

Q: How will CalPERS' decision affect my interim disability allowance?

A: *If CalPERS grants the disability retirement application, CalPERS will reimburse the employer for any interim disability allowance the employer may have paid the employee while the application was pending. This reimbursement will be deducted from any retroactive disability retirement benefits that CalPERS would otherwise pay to the employee. If the retroactive portion of the disability retirement allowance is not sufficient to reimburse the total interim disability allowance, an amount no greater than 10 percent shall be deducted from the employee's monthly disability retirement and reimbursed to the state agency until the total interim disability allowance has been repaid. If CalPERS denies the disability retirement application, upon the employee's request, the employer must reinstate the employee to his or her position with back salary and benefits, less any interim disability allowance the employer may have paid. Either the employee or the employer may appeal CalPERS' decision through CalPERS' appeals process. (Please see the CalPERS section, on page 2.)*

Q: I believe my employer has discriminated against me based upon my disability. May I file an appeal with SPB?

A: *Yes. An employee who believes he or she has been discriminated against because of an actual, perceived, or past physical or mental disability may file an appeal with SPB, after first attempting to resolve the complaint with his or her employer. (Also, please see the California Department of Fair Employment and Housing section, on page 4.)*

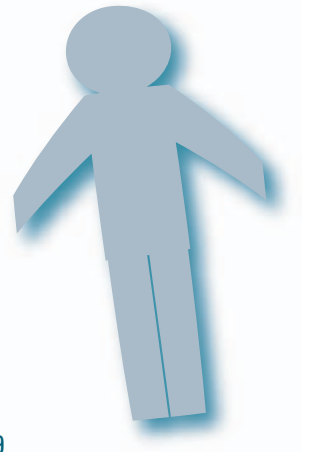
Q: What remedies may SPB award if it finds that disability discrimination has occurred?

A: *If SPB finds that an employer has engaged in illegal disability discrimination, it may take any action that would effectuate the purposes of the law, including, but not limited to, ordering that the employee be hired, reinstated, or upgraded to a new position. SPB may also award backpay and compensatory damages.*

Q: I have received a letter from my employer that describes various options that may be available. One of the options offered is to utilize SPB's mediation process. How does that process work?

A: *If an employee and an employer agree, they may request mediation through SPB's State Employee Mediation Program at no cost to the employee. If mediation is requested, the discussions during the mediation will be confidential, and an impartial, trained mediator will assist the employee and the employer in finding a mutually acceptable option for resolving their work-related medical issues. An employee who agrees to mediation will not waive his or her rights to pursue an appeal if the dispute is not resolved during mediation, so long as the employee files the appeal with SPB within the applicable time limits.*

For additional information, you may check the SPB's Web site at www.spb.ca.gov or call SPB at 916-653-1705.





WORKERS' COMPENSATION (SCIF)

At no cost to you, workers' compensation is a program that your employer provides by law to help you if you are injured on the job or become ill due to your job.

The following are some of the frequently asked questions regarding workers' compensation.

Q: What is a workers' compensation injury?

A: *Any injury or illness that occurs due to employment.*

Q: How does this affect the employee's own health insurance?

A: *Workers' compensation is separate from personal health care insurance. Workers' compensation insurance covers work-related injuries and illnesses. There is no deductible—all approved medical bills will be paid. The treating doctor must be informed if the employee's injury is work-related.*

Q: What is State Compensation Insurance Fund (SCIF)?

A: *SCIF is the provider of workers' compensation claims management for the State of California.*

Q: Is workers' compensation the same as non-industrial disability leave (NDI)?

A: *No. Workers' compensation is only for injuries or illnesses that occur due to employment. NDI is for injuries or illnesses that are not work-related and is handled by the Employment Development Department.*

Q: How do I file a claim?

A: *As soon as you can after your injury, tell your supervisor that you have been hurt. Except for first aid injuries, your employer will provide you with a claim form on which you describe your injury and how, when, and where it occurred. Return the completed form to your employer, who will send it to SCIF. SCIF will then get in touch with you to explain the benefits to which you may be entitled. There are time limits in which to file, so contact SCIF at 1-888-222-3211 for the SCIF office number nearest you.*

Q: What are my workers' compensation benefits?

A: *If your claim is accepted, all SCIF approved medical, hospital, and reasonable medical transportation expenses will be paid. You will be provided either industrial disability leave or temporary disability benefits, which are two-thirds of your lost wages up to a maximum benefit per week, unless you are entitled to a salary continuation program. If your injury or illness results in a permanent impairment that decreases your ability to compete in the open labor market, SCIF will also pay you permanent disability benefits. In the event of a work-related death, death benefits are also available.*

Q: What if my claim is not accepted?

A: *You can choose to use leave credits or NDI. If your claim is denied you may also choose to appeal your claim to the Workers' Compensation Appeals Board.*

Q: What is industrial disability leave (IDL)?

A: *State employees who are active members of CalPERS or the State Teachers Retirement System are eligible to receive the IDL salary continuation benefit instead of temporary disability. IDL provides full salary for the first 22 days of disability and two-thirds salary for the next 11 months of disability, providing the absences occur within 2 years of the first day of disability. If your IDL benefits are exhausted and you continue to be temporarily disabled, you are entitled to receive temporary disability benefits. If you are a "State Safety" class employee, talk with your agency's personnel department. Your IDL payments will be issued by your agency on your regular payday. If you qualify, you may elect to receive IDL, with supplementation using your own leave credits. Your personnel department will give you an industrial Disability Benefits Information Form (Std. 619) after you report your injury or illness.*

Q: When can I receive disability benefits?

A: *After SCIF verifies that an absence was caused by an on-the-job injury or illness and you are unable to work for more than 3 calendar days, you will receive either IDL or temporary disability (TD) benefits. You do not have to exhaust your leave credits to be entitled to TD or IDL. This 3-day "waiting period" will be paid, however, if you are unable to work for more than 14 calendar days or are hospitalized.*

Q: When does temporary disability start and stop?

A: *If you are not eligible for IDL benefits, SCIF will pay you TD. You will receive TD payments every two weeks during the time you qualify for this benefit. Generally, TD stops when you return to work or your treating physician releases you for work or says that your injury has reached a point of maximum improvement.*

Q: When does permanent disability start and stop?

A: *Generally, if your claim is accepted and your treating physician has determined that you have permanent disability (PD), payments begin within 14 days after the termination of TD. If the extent of your PD is known, payments will continue to be paid every two weeks until the full benefit is paid. If the extent of your PD is not known, payments will continue to be paid every two weeks until a reasonable estimate of your PD indemnity due has been paid.*

Q: What if I have a recurrence and require further medical care?

A: *If you need more medical care for your injury after your original treatment has ended, you have one full year after your last treatment to notify SCIF of your request for more medical treatment.*

Q: What if I have to change my line of work because of a workers' compensation injury?

A: *If you are unable to return to your job due to a workers' compensation injury, you may qualify for vocational rehabilitation benefits and/or apply for disability retirement. Your rehabilitation plan may be as simple as modifying your current job or may involve training for a new job.*

Q: Can I lose my job because of a workers' compensation injury?

A: *The law prohibits your employer from discharging you or discriminating against you because you filed a workers' compensation claim. You may, however, lose your job if a medical evaluator finds you are unable to return to your usual and customary occupation. You may also be provided vocational rehabilitation benefits to retrain you for a new job.*

For additional information, you may call SCIF at 1-888-222-3211.

